

## Message Text

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45

ORIGIN L-03

INFO OCT-01 AF-10 ARA-16 EA-11 EUR-25 NEA-10 RSC-01 ADP-00

EB-11 COA-02 OIC-04 ACDA-19 SCI-06 INT-08 CIAE-00

DODE-00 PM-07 H-03 INR-10 NSAE-00 NSC-10 PA-03 PRS-01

SS-15 USIA-15 AEC-11 AGR-20 CG-00 COME-00 DOTE-00

FMC-04 JUSE-00 NSF-04 OMB-01 TRSE-00 CEQ-02 /233 R

DRAFTED BY L/OA:HDCAMITTA:MERS

08/07/73 EXT. 21700

APPROVED BY L/OA:HDCAMITTA

L/ARA: MR. BOREK

USOAS: MR. CRIGLER (INFO)

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P 081556Z AUG 73

FM SECSTATE WASHDC

TO AMCONSUL RIO DE JANEIRO PRIORITY

LIMITED OFFICIAL USE STATE 156310

E.O. 11652: N/A

TAGS: PBOR, PFOR, OAS

SUBJ: LOS - IAJC SESSIONS

REF: RIO DE 2728

FOR BARNES

1. REFTEL REQUESTS INFORMATION ON THREE LAW OF THE SEA MATTERS: PELAGIC SPECIES, OCEAN FLOOR, AND DISPUTE SETTLEMENT. WITHOUT KNOWING SPECIFICS TO BE ADDRESSED FOLLOWING BACKGROUND IS SUPPLIED WHICH WE HOPE WILL BE USEFUL.

2. PELAGIC SPECIES. THE U.S. BELIEVES THAT SPECIES APPROACH TO FISHERIES REGULATIONS AND MANAGEMENT IS LIMITED OFFICIAL USE  
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MOST SOUND AND RATIONAL ONE AND BEST ATTUNED TO BIOLOGICAL CHARACTERISTICS, AND OUR LOS PROPOSALS REFLECT THIS. BASICALLY THIS APPROACH GIVES MANAGEMENT AUTHORITY OF COASTAL SPECIES TO THE COASTAL STATE

AND OF ANADROMOUS SPECIES (E.G. SALMON) TO THE STATE OF ORIGIN, WITH THE MANAGING STATE HAVING A PREFERENCE FOR THAT PART OF THE MAXIMUM SUSTAINABLE YIELD ITS VESSELS ARE CAPABLE OF HARVESTING. MANAGEMENT AUTHORITY WOULD FOLLOW EACH SPECIES TO THE LIMITS OF ITS RANGE. PROVISION WOULD BE MADE FOR TRADITIONAL DISTANT WATER FISHING.

U.S. IS CONVINCED THAT HIGHLY MIGRATORY AND TRULY OCEANIC SPECIES CAN ONLY BE PROPERLY REGULATED THROUGH INTERNATIONAL ORGANIZATIONS BECAUSE OF THEIR OCEAN-WIDE DISTRIBUTION AND VAST MIGRATIONS, THE TEMPORARY NATURE OF THEIR PRESENCE IN THE WATERS OFF ANY SINGLE STATE, AND THE WELL DEMONSTRATED ECONOMIC FACT THAT A VIABLE FISHERY FOR SUCH SPECIES MUST ALSO BE FAR RANGING. ALL INTERESTED COASTAL AND DISTANT-WATER FISHING STATES COULD PARTICIPATE IN SUCH ORGANIZATIONS. ENFORCEMENT PROCEDURES AND REGULATORY PROVISION WOULD BE PROVIDED TO STRENGTHEN SUCH ORGANIZATIONS AS WOULD BE DISPUTE SETTLEMENT MECHANISMS. THE PERTINENT SECTIONS OF THE PROPOSED U.S. FISHERIES ARTICLE ON PELAGIC SPECIES FOLLOW:

QTE III. HIGHLY MIGRATORY OCEANIC RESOURCES

THE HIGHLY MIGRATORY OCEANIC RESOURCES LISTED IN ANNEX A SHALL BE REGULATED BY APPROPRIATE INTERNATIONAL FISHERY ORGANIZATIONS.

A. ANY COASTAL STATE PARTY, OR OTHER STATE PARTY WHOSE FLAG VESSELS HARVEST OR INTEND TO HARVEST A REGULATED RESOURCE, SHALL HAVE AN EQUAL RIGHT TO PARTICIPATE IN SUCH ORGANIZATIONS.

B. NO STATE PARTY WHOSE FLAG VESSELS HARVEST A REGULATED RESOURCE MAY REFUSE TO COOPERATE WITH SUCH ORGANIZATIONS. REGULATIONS OF SUCH ORGANIZATIONS IN LIMITED OFFICIAL USE  
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ACCORDANCE WITH THIS ARTICLE SHALL APPLY TO ALL VESSELS FISHING THE REGULATED RESOURCES REGARDLESS OF THEIR NATIONALITY.

C. IN THE EVENT THE STATES CONCERNED ARE UNABLE OR DEEM IT UNNECESSARY TO ESTABLISH AN INTERNATIONAL ORGANIZATION THE RESOURCES SHALL BE REGULATED BY AGREEMENT OR CONSULTATION AMONG SUCH STATES.

ENFORCEMENT

VII. ACTIONS UNDER THIS PARAGRAPH SHALL BE TAKEN IN SUCH A MANNER AS TO MINIMIZE INTERFERENCE WITH

FISHING AND OTHER ACTIVITIES IN THE MARINE ENVIRONMENT...

B. INTERNATIONAL FISHERIES ORGANIZATIONS - EACH STATE PARTY TO AN INTERNATIONAL ORGANIZATION SHALL MAKE IT AN OFFENSE FOR ITS FLAG VESSELS TO VIOLATE THE REGULATIONS ADOPTED BY SUCH ORGANIZATION IN ACCORDANCE WITH THIS ARTICLE. OFFICIALS AUTHORIZED BY THE

APPROPRIATE INTERNATIONAL ORGANIZATION, OR OF ANY STATE SO AUTHORIZED BY THE ORGANIZATION, MAY INSPECT AND ARREST VESSELS FOR VIOLATING THE FISHERY REGULATIONS ADOPTED BY SUCH ORGANIZATIONS. AN ARRESTED VESSEL SHALL BE PROMPTLY DELIVERED TO THE DULY AUTHORIZED OFFICIALS OF THE FLAG STATE. ONLY THE FLAG STATE OF THE OFFENDING VESSEL SHALL HAVE JURISDICTION TO TRY THE CASE OR IMPOSE ANY PENALTIES REGARDING THE VIOLATION OF FISHERY REGULATIONS ADOPTED BY INTERNATIONAL ORGANIZATIONS PURSUANT TO THIS ARTICLE. SUCH STATE HAS THE RESPONSIBILITY OF NOTIFYING THE ENFORCING ORGANIZATION WITHIN A PERIOD OF SIX MONTHS OF THE DISPOSITION OF THE CASE.

DISPUTES SETTLEMENT

IX. ANY DISPUTE WHICH MAY ARISE BETWEEN STATES UNDER THIS ARTICLE SHALL, AT THE REQUEST OF ANY OF THE PARTIES TO THE DISPUTE, BE SUBMITTED TO A SPECIAL COMMISSION OF FIVE MEMBERS, UNLESS THE PARTIES AGREE TO SEEK A SOLUTION BY ANOTHER METHOD OF PEACEFUL SETTLEMENT, AS PROVIDED FOR LIMITED OFFICIAL USE  
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IN ARTICLE 33 OF THE CHARTER OF THE UNITED NATIONS. THE COMMISSION SHALL PROCEED IN ACCORDANCE WITH THE FOLLOWING PROVISIONS.

A. THE MEMBERS OF THE COMMISSION, ONE OF WHOM SHALL BE DESIGNATED AS CHAIRMAN, SHALL BE NAMED BY AGREEMENT BETWEEN THE STATES IN DISPUTE WITHIN TWO MONTHS OF THE REQUEST FOR SETTLEMENT IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE. FAILING AGREEMENT THEY SHALL, UPON REQUEST OF ANY STATE PARTY TO THE DISPUTE, BE NAMED BY THE SECRETARY GENERAL OF THE UNITED NATIONS, WITHIN A FURTHER TWO MONTH PERIOD, IN CONSULTATION WITH THE STATES INVOLVED AND WITH THE PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE AND THE DIRECTOR-GENERAL OF THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, FROM AMONGST WELL-QUALIFIED PERSONS BEING NATIONALS OF STATES NOT INVOLVED IN THE DISPUTE AND SPECIALIZING IN LEGAL, ADMINISTRATIVE OR SCIENTIFIC QUESTIONS RELATING TO FISHERIES, DEPENDING UPON THE NATURE OF THE DISPUTE TO BE SETTLED. ANY VACANCY ARISING AFTER THE ORIGINAL APPOINTMENT SHALL BE FILLED IN THE SAME MANNER AS PROVIDED

FOR THE INITIAL SELECTION.

B. ANY STATE PARTY TO PROCEEDINGS UNDER THESE ARTICLES SHALL HAVE THE RIGHT TO NAME ONE OF THE NATIONALS TO SIT WITH THE SPECIAL COMMISSION, WITH THE RIGHT TO PARTICIPATE FULLY IN THE PROCEEDINGS ON THE SAME FOOTING AS A MEMBER OF THE COMMISSION BUT WITHOUT THE RIGHT TO VOTE

OR TO TAKE PART IN THE WRITING OF THE COMMISSION'S DECISION.

C. THE COMMISSION SHALL DETERMINE ITS OWN PROCEDURE, ASSURING EACH PARTY TO THE PROCEEDINGS A FULL OPPORTUNITY TO BE HEARD AND TO PRESENT ITS CASE. IT SHALL ALSO DETERMINE HOW THE COSTS AND EXPENSES SHALL BE DIVIDED BETWEEN THE PARTIES TO THE DISPUTE FAILING AGREEMENT BY THE PARTIES ON THIS MATTER.

D. PENDING THE FINAL AWARD BY THE SPECIAL COMMISSION, MEASURES IN DISPUTE RELATING TO CONSERVATION SHALL LIMITED OFFICIAL USE  
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BE APPLIED; THE COMMISSION MAY DECIDE WHETHER AND TO WHAT EXTENT OTHER MEASURES SHALL BE APPLIED PENDING ITS FINAL AWARD.

E. THE SPECIAL COMMISSION SHALL RENDER ITS DECISION, WHICH SHALL BE BINDING UPON THE PARTIES, WITHIN A PERIOD OF FIVE MONTHS FROM THE TIME IT IS APPOINTED UNLESS IT DECIDES, IN THE CASE OF NECESSITY TO EXTEND THE TIME LIMIT FOR A PERIOD NOT EXCEEDING TWO MONTHS.

F. THE SPECIAL COMMISSION SHALL, IN REACHING ITS DECISION, ADHERE TO THIS ARTICLE AND TO ANY AGREEMENTS BETWEEN THE DISPUTING PARTIES IMPLEMENTING THIS ARTICLE. UNQTE.

3. OCEAN FLOOR. IT IS ASSUMED THAT THIS SUBJECT DEALS WITH THE SEABED AREA BEYOND THE LIMITS OF NATIONAL JURISDICTION. AS MR. STEVENSON INDICATED LAST SUMMER, U.S. CAN ACCEPT VIRTUALLY COMPLETE COASTAL STATE RESOURCE MANAGEMENT JURISDICTION OVER RESOURCES IN ADJACENT SEABED AREAS IF THIS JURISDICTION IS SUBJECT TO INTERNATIONAL TREATY LIMITATIONS IN FIVE RESPECTS. THE FIVE RESPECTS ARE: (A) INTERNATIONAL TREATY STANDARDS TO PREVENT UNREASONABLE INTERFERENCE WITH OTHER USES OF THE OCEAN; (B) INTERNATIONAL TREATY STANDARDS TO PROTECT THE OCEAN FROM POLLUTION; (C) INTERNATIONAL TREATY STANDARDS TO PROTECT THE INTEGRITY OF INVESTMENT; (D) SHARING OF REVENUES FOR INTERNATIONAL COMMUNITY PURPOSES; AND (E) COMPULSORY

SETTLEMENT OF DISPUTES. THIS APPROACH HAS BEEN EMBODIED IN DRAFT ARTICLES TABLED THIS SUMMER. NO OUTER BOUNDARY WAS SUGGESTED IN THE ARTICLES, ALTHOUGH THE TABLING SPEECH INDICATED THAT U.S. WOULD WELCOME THE OPPORTUNITY FOR CONTINUING CONSULTATIONS ON LIMIT.

IT IS VIRTUALLY IMPOSSIBLE TO SUMMARIZE U.S. PROPOSAL FOR THE INTERNATIONAL REGIME AND MACHINERY TO BE ESTABLISHED FOR THE DEEP SEABED AREA. ON SOME OF THE MORE LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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PORTANT ISSUES, THE U.S. POSITION IS AS FOLLOWS: U.S. BELIEVES THAT THE INTERNATIONAL AUTHORITY SHOULD LIMIT ITSELF TO LICENSING STATES OR ENTERPRISES SPONSORED BY STATES TO EXPLORE AND EXPLOIT SEABED RESOURCES, INSPECTING AND REGULATING THEIR ACTIVITIES, AND COLLECTING REVENUES FOR THE INTERNATIONAL COMMUNITY. (OTHER STATES MAINTAIN THE INTERNATIONAL AGENCY SHOULD HAVE CONCURRENT OR EXCLUSIVE AUTHORITY TO ENGAGE DIRECTLY IN EXPLOITATION.) THE U.S. OPPOSES GIVING THE INTERNATIONAL AGENCY AUTHORITY TO REGULATE PRICES AND PRODUCTION. WHILE IT IS GENERALLY AGREED THAT THE ASSEMBLY WOULD BE COMPOSED OF ALL MEMBER STATES, U.S. FAVORS ESTABLISHMENT OF A SMALLER COUNCIL WHICH WOULD EXERCISE MOST OF RULE-MAKING AND REGULATORY AUTHORITY. TO EXTENT AUTHORITY IS GIVEN REGULATORY POWERS, U.S. BELIEVES THAT MORE INDUSTRIALLY DEVELOPED STATES WHOSE ACTIVITIES WILL BE MOST AFFECTED WILL REQUIRE A VOTING STRUCTURE THAT PROTECTS THEIR INTERESTS. (OTHER STATES HAVE FAVORED A ONE-VOTE-ONE-NATION PRINCIPLE.) U.S. SUPPORTS A REVENUE SHARING SCHEME.

4. DISPUTE SETTLEMENT. AN ESSENTIAL ELEMENT IN ALL U.S. PROPOSALS ARE MECHANISMS FOR COMPULSORY SETTLEMENT OF DISPUTES. ALL U.S. DRAFT PROPOSALS (FISHERIES, DEEP SEABED AREA, SCIENTIFIC RESEARCH, POLLUTION, AND COASTAL STATE ECONOMIC AREA) CONTAIN DISPUTE SETTLEMENT ARTICLES. THE OBJECTIVE IS TO HAVE IMPARTIAL PROCEDURES TO RESOLVE DISPUTES THAT MAY ARISE. THIS IS MOST IMPORTANT BECAUSE OF THE MIX OF INTERESTS AND USES IN OCEAN SPACE AREAS. IF NATIONS CANNOT AGREE TO SETTLE THEIR DISPUTES PEACEFULLY AND BE BOUND TO DO SO AND TO OBEY THE DECISIONS WHICH ARE GIVEN, IT IS THE U.S. BELIEF THAT ALL THE STANDARDS AND THE RIGHTS AND DUTIES OF STATES WHICH ARE TO BE ELABORATED IN THE TREATY WILL BE OF LITTLE PRACTICAL VALUE. IF NEW RELATIONSHIPS ARE TO BE ESTABLISHED FOR THE CONDUCT OF AFFAIRS IN THE OCEANS, THOSE NEW RELATIONSHIPS MUST INCLUDE A SYSTEM WHICH WILL PERMIT SETTLEMENT OF DIFFERENCES ON THE BASIS OF THE RIGHTS AND DUTIES ESTABLISHED UNDER THE NEW TREATY WITHOUT RESORT TO THE USE OF FORCE AND WITHOUT POLITICAL

CONFRONTATION. THE U.S. COULD NOT AGREE TO A GREAT  
MANY OF THE THINGS THE U.S. HAS ITSELF PROPOSED FOR A  
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NEW LOS CONVENTION IN THE ABSENCE OF A GENERAL SCHEME  
OF COMPULSORY DISPUTE SETTLEMENT FOR OCEAN USES.

5. DEPARTMENT IS POUCHING MORE DETAILED MATERIALS  
AND WILL SUPPLY FURTHER INFORMATION UPON REQUEST. ROGERS

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## Message Attributes

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**Concepts:** n/a  
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